IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.2227 OF 2006

Thane Municipal Corporation of
the City of Thane ...Appellant

Versus

M/s.Unity Auto Industries ...Respondent

Shri Mandar Limaye i/by Shri R.S. Apte for the Applicant.
Shri D.M.Hungad for the Respondent.

CORAM : A. S. OKA, J.

DATE : JANUARY 23, 2007.

P.C.:

1. Admit. Advocate for the Respondent waives service. By consent, taken up for final hearing forthwith.

2. The Respondent is the plaintiff who filed a summary suit under Order XXXVII of the Code of Civil Procedure, 1908 against the Appellant. Summons for judgment was taken out and was served to the Appellant. However, no reply was filed to the summons for judgment. Therefore, the learned Trial Judge passed a decree on 16th October, 2002.

3. The learned Advocate for the Appellant

submitted that the Appellant is a Municipal Corporation constituted under the Bombay Provincial Municipal Corporations Act, 1949 and being a statutory body it deserves to be granted one more opportunity to defend the suit. The learned Advocate for the Respondent pointed out that similar decrees were passed in two other companion suits. He submitted that after remand, in the said two suits, the Trial Court has passed money decree and therefore, the Appellant has no defence.

4. I have considered the rival submissions. The Appellant is a Municipal Corporation which has suffered the impugned decree. In my view, in the interests of justice, one opportunity deserves to be granted to the Appellant to contest the suit. however, considering the facts and circumstances of the case, the suit need not be relegated to the stage of hearing of summons for judgment. The Appellant will have to deposit the decretal amount in the Trial Court and subject to the deposit, a leave to defend will stand granted in favour of the Appellant. The suit will have to be disposed of in a time bound schedule.

5. Hence, I pass the following order:

(i) The impugned judgment and decree dated 16th October, 2002 in Summary Suit No.2102 of 2002 will stand set aside subject to condition of the Appellant depositing the entire amount due and payable as per the impugned decree as of today within a period of four weeks from today with the Trial Court.

(ii) If the amount is not deposited within the stipulated time, the impugned decree will stand and the present Appeal will stand dismissed.

(iii) If the amount is deposited within the stipulated time, the parties will appear before the learned Trial Judge on 01st March, 2007. Within a period of one week from 01st March, 2007, the Appellant will file written statement. No further time will be granted to the Appellant to file written statement.

(iv) The learned Trial Judge shall decide suit as expeditiously as possible and preferably on or before 30th June, 2007.

(v) The amount, if any, deposited by the Appellant shall be invested by the trial Court in fixed deposit in any nationalised bank initially for a period of nine months. The order for disbursement of the amount and the interest accrued on the fixed deposit shall be passed by the Trial Court at the time of deciding suit finally.

(vi) Appeal is partly allowed in above terms. The Appellant will pay costs of Rs.5,000/- to the Respondent within a period of four weeks from today.

(vii) Writ to be sent immediately. Trial Court will act upon an authenticated copy of this order.

JUDGE